No. 990 —L. C., Bangalore, dated the 22nd November 1938.

Under Rule 8 of the rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill to amend the Patents and Designs Act, 1925, is published for general information with the statement of objects and reasons.

By Order,
A. SUNDARARAJA RAO,
Secretary,
Mysore Legislative Council.

Bill to amend the Patents and Designs Act, 1925.

Whereas it is expedient to amend the Patents and Designs Act, 1925 ; it is hereby enacted as follows :—

1. This Act may be called the Mysore Patents and Designs (amendment) Act, 193 . Short Title.

2. In section 2 of the Mysore Patents and Designs Act, 1925, hereinafter referred to as the said Act,— Amendment of Section 2, Act III of 1925.

(*a*) for clause (4), the following clause shall be substituted, namely :—

"(4) 'design' means only the features of shape, configuration, pattern or ornament, applied to any article, by any industrial process or means whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye ; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device and does not include any trade mark as defined in section 478 or property mark as defined in section 479 of the Indian Penal Code as in force in Mysore."

(*b*) for clause (10) the following clause shall be substituted, namely :—

"(10) 'patentee' means the person for the time being entered on the register of patents kept under this Act as the grantee or proprietor of the patent,"

(*c*) in clause (12), after the words "proprietor of a new," the word "or" shall be substituted for the word "and."

Amendment of Section 5, Act III of 1925.

3. In section 5 of the said Act,—

(*a*) in sub-section (1),—

(i) in clause (*b*) the words "or relate to more than one invention" shall be omitted:

(ii) the following clause shall be inserted after clause (*e*), namely:—

"or (*f*) the specification relates to more than one invention;" and

(iii) at the end of section 5(1), the following proviso shall be inserted:—

"Provided that, when a specification comprises more than one invention, the application shall, if the controller or the applicant, so requires, be restricted to one invention and the other inventions may be made the subject-matter of fresh applications; and any such fresh application shall be proceeded with as a substantive application, but the controller may, in his discretion, direct that any such fresh application made before the acceptance of the original application, shall bear the date of the original application or such later date as he may fix, and the fresh application shall be deemed, for the purposes of this Act, to have been made on the date which it bears in accordance with such direction"; and

(*b*) in sub-section (4), the following proviso shall be substituted for the existing proviso, namely:—

"Provided that where, before or within three months after the expiration of the said period of twelve months a request is made to the controller for an extension of time by any period not exceeding three months, the application shall, on payment of the prescribed fee, be continued or revived, as the case may be, during but not beyond, the period of extension so requested."

Omission of Section 8, Act III of 1925.

4. Section 8 shall be omitted.

Amendment of Section 9, Act III of 1925.

5. In section 9 of the said Act, in sub-sections (1) and (2), for the words "three months" the words "four months" shall be substituted.

6. In section 10 of the said Act :— Amendment of Section 10, Act III of 1925.

(*a*) after sub-section (1) the following sub-section shall be inserted, namely :—

"(1-A) Notwithstanding anything contained in sub-section (1) where :

(*a*) an applicant has agreed in writing that on the grant to him of a patent he will assign it to another party or to a joint applicant and refuses to proceed with the application, or

(*b*) disputes arise between joint applicants as to proceeding with an application,

the controller, if he is satisfied of the existence of such agreement, or in any other case, that any joint applicant or applicants ought to be allowed to proceed alone, may direct that such other party or joint applicant or applicants may proceed with the application accordingly and may grant a patent to him or them as the case may be :

Provided that—

(i) the controller shall not give any such direction until every party interested has had an opportunity of being heard by him, and

(ii) an appeal from any such direction shall lie to the Government."

(*b*) in sub-section (2).—

(i) in clause (*b*) of the proviso, the words "or, by a reference under section 8" shall be omitted,

(ii) for clause (*d*) of the proviso, the following clause shall be substituted, namely :—

"(*d*) where for any reason a patent cannot be sealed within the period allowed by any of the foregoing provisions of this section, that period may, on payment of the prescribed fee and on compliance with the prescribed conditions, be extended to the extent applied for but not exceeding three months."

7. In the proviso to section 11 of the said Act, for the words "the publication of the specification" the words "the advertisement of the acceptance of the application" shall be substituted. Amendment of Section 11, Act III of 1925.

Amendment of section 13, Act III of 1925.

8. In section 13 of the said Act, for sub-section (2), the following sub-section shall be substituted, namely :—

" (2) where a patent has been revoked by the High Court on the ground that it has been obtained in fraud of the true and first inventor, or where the grant of a patent has been refused by the controller under section 9 on the ground stated in clause (a) of sub-section (1) of that section, the controller may, on the application of the true inventor or his legal representative or assignee made in accordance with the provisions of this Act, grant to him a patent for the whole or any part of the invention, and the patent so granted shall bear the same date as the patent so revoked or, in the case of a patent the grant of which has been refused, the same date as would have been borne by the patent if it has been granted :

Provided that no suit shall be brought for any infringement of the patent so granted committed before the actual date when such patent was granted."

Amendment of section 14, Act III of 1925.

9. In section 14 of the said Act,—

(*a*) in sub-section (1), for the words "fourteen years" the words " sixteen years " shall be substituted ;

(*b*) after sub-section (1), the following sub-sections shall be inserted, namely :—

" (1-A) Any patent, the original term of which had not expired on or before the first day of..... .....193 , shall have effect as if the term mentioned therein was sixteen years instead of fourteen years, and any licence existing at that date which has been granted for the term of the patent shall be treated as having been granted for the term as so extended if the licensee so desires.

(1-B) Where any party to a contract with the patentee or any other person entered into before the first day of .....193 , is subjected to loss or liability by reason of the extension of the term of any patent under this section, any District Court having jurisdiction, may determine in what manner and by which parties such loss or liability shall be borne."

(*c*) for the proviso in sub-section (2), the following proviso shall be substituted, namely :—

"Provided that where the patentee, before, or within three months after the expiration of the time for payment, applies to the controller for an extension of time by any period not exceeding three months, the patent shall, on payment of such additional fee as may be prescribed, be continued or revived, as the case may be, during, but not beyond, the period of extension applied for."

Amendment of Section 15, Act III of 1925.

10. In section 15 of the said Act—

(*a*) in sub-section (1),—

(i) the words "after advertising in the prescribed manner his intention to do so" shall be omitted, and

(ii) after the words "prescribed fee," the words "and must be advertised by the patentee within the prescribed time and in the prescribed manner" shall be added;

(*b*) in sub-section (2), after the word "may" and before the words "give notice," the words "within such time as may be prescribed and on payment of the prescribed fee" shall be inserted;

(*c*) in sub-section (6), for the words "seven" and "fourteen," the words "five" and "ten" shall be substituted.

Insertion of new section 15-A in Act III of 1925.

11. After section 15, the following section shall be inserted, namely:—

"15-A. (1) Where a patent for an invention has been applied for or granted, and the applicant or the patentee, as the case may be, applies for a further patent in respect of any improvement in or modification of the invention, he may in his application for the further patent request that the term limited in that patent for the duration thereof be the same as that of the original patent or so much of that term as is unexpired, and if he does so, a patent (hereinafter referred to as a patent of addition) may be granted for such term as aforesaid.

(2) Save as otherwise expressly provided by this Act, a patent of addition shall remain in force as long as the patent for the original invention remains in force, but

no longer, and in respect of a patent of addition no fees shall be payable for renewal:

Provided that if the patent for the original invention is revoked, then the patent of addition shall, if the authority by which it is revoked so orders, become an independent patent, and the fees payable, and the dates when they become payable, shall be determined by its date, but its duration shall not exceed the unexpired term of the patent for the original invention;

(3) The grant of a patent of addition shall be conclusive evidence that the invention is a proper subject for a patent of addition, and the validity of the patent shall not be questioned on the ground that the invention ought to have been the subject of an independent patent."

Amendment of Section 18, Act III of 1925.

12. In section 18 of the said Act, after the word "disclaimer" and before the words "in such manner," the words "correction or explanation" shall be inserted.

Amendment of Section 19, Act III of 1925.

13. In section 19 of the said Act, for the words "before the disclaimer, correction or explanation," the words "before the date of the decision allowing the amendment" shall be substituted.

Amendment of Section 20, Act III of 1925.

14. In sub-section (4) of section 20 of the said Act, the words beginning with "and, unless" and ending with "affecting a patent" shall be omitted.

Substitution of new section for Section 21, Act III of 1925.

15. For section 21 of the said Act, the following sections shall be substituted, namely :—

"21 (1) subject to the other provisions of this section, a patent shall have to all intents the like effect as against the Government of Mysore as it has against a subject.

(2) The officers or authorities administering any department of the service of the Government of Mysore may, by themselves or by such of their agents, contractors or others as may be authorised in writing by them, at any time after the application, and after giving notice to the applicant or patentee, make, use or exercise the invention for the service of the Government on such terms as may, either before or after the use thereof, be agreed on, with the approval of the Government, between such officers or authorities and the applicant or patentee, or in default of agreement as may be settled in the manner hereinafter provided. And the terms of any agreement or licence concluded between the applicant or patentee and any

person other than such officers or authorities, shall be inoperative as far as concerns the making, use or exercise of the invention for the service of the Government.

(3) Where an invention which is the subject of any patent has, before the date of the patent, been duly recorded in a document by, or tried by or on behalf of, the officers or authorities administering any department of the service of the Government (such invention not having been communicated directly or indirectly by the applicant or patentee) such officers or authorities, or such of their agents, contractors or others, as may be authorised in writing by them, may, after giving notice to the applicant or patentee, make, use or exercise the invention so recorded or tried for the service of the Government, free of any royalty or other payment to the applicant or patentee, notwithstanding the existence of the patent. If, in the opinion of such officers or authorities, the disclosure to the applicant or patentee as the case may be, of the document recording the invention or the evidence of the trial thereof, if required, would be detrimental to the public interest, it may be made confidentially to counsel on behalf of the applicant or patentee, or to any independent expert mutually agreed upon.

(4) In the event of any dispute as to the making, use or exercise of an invention under this section, or the terms therefor, or as to the existence or scope of any record or trial as aforesaid, the matter shall be referred to the High Court for decision, who shall have power to refer the whole matter or any question or issue of fact arising thereon to be tried before a special or official referee or an arbitrator upon such terms as it may direct. The Court, referee or arbitrator, as the case may be, may, with the consent of the parties, take into consideration the validity of the patent for the purposes only of the reference and for the determination of the issues between the applicant or patentee and such officers or authorities. The Court, referee or arbitrator, further, in settling the terms as aforesaid, shall be entitled to take into consideration any benefit or compensation which the applicant or patentee, or any other person interested in the patent, may have received directly or indirectly from the Government or from such officers or authorities in respect of such patent :

Provided that, if the inventor or patentee is a Government servant and the subject matter of the invention is certified by the Government, to be connected with work done in the course of such service, any such dispute shall be settled by the Government after hearing the applicant or patentee and any other person having an interest in the invention or patent.

(5) The right to use an invention for the services of the Government under the provisions of this section, or any provisions for which this section is substituted, shall include and shall be deemed always to have included, the power to sell any articles made in pursuance of such right which are no longer required for the services of the Government.

(6) Nothing in this section shall affect the right of the Government or of any person deriving title directly or indirectly from the Government to sell or use any articles forfeited under any law for the time being in force relating to excise."

Amendment of Section 22, Act III of 1925.

16. In section 22 of the said Act.—

(*a*) in sub-section (1) for the words beginning with "reasonable requirements" and ending with the words "satisfied" the words "the demand for a patented article in Mysore is not being met to an adequate extent and on reasonable terms" shall be snbstituted;

(*b*) in sub-section (4),—

(i) for the words beginning with "the reasonable requirements" and ending with "not been satisfied," the words "the demand for the patented article in Mysore is not being met to an adequate extent and on reasonable terms" shall be substituted; and

(ii) for the words "the reasonable requirements of the public will not be satisfied" the words "the demand will not be adequately met" shall be substituted;

(*c*) in sub-section (5),—

(i) for the words "the reasonable requirements of the public shall not be deemed to have been satisfied" the words "the demand for a patented article shall not be deemed to have been met to an adequate extent and on reasonable terms" shall be substituted;

(ii) in clause (a) the words beginning with "or the demand" and ending with "reasonably met" shall be omitted; and

(iii) in clause (b) the words "before or after the commencement of this Act" shall be omitted;

(*d*) sub-section (6) shall be omitted.

17. In section 23 of the said Act,— Amendment of Section 23, Act III of 1925.

(*a*) in sub-section (1), for the words "for the revocation of the patent" the words "for relief under this section" shall be substituted; and

(*b*) in sub-section (2)—

(i) after the words "an order" and before the word "revoking" the letter and bracket "(a)" shall be inserted; and

(ii) after clause (ii) the following shall be added, namely :—

(*b*) "or ordering the patentee to grant a licence to the applicant which may be a licence exclusive to him or otherwise as the Government may direct."

18. After section 23 of the said Act, the following section shall be inserted, namely :— Insertion of new Section 23 A in Act III of 1925.

"23A. An order of the High Court under Section 22 or of the Government under Section 22 or Section 23 directing the grant of any licence shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting a licence and executed by the patentee and all other necessary parties." Operation of order under Section 22 or Section 23.

19. In clause (g) of sub-section (1) of section 26 of the said Act, before the words "a part" wherever they occur, the words "the whole or" shall be inserted. Amendment of Section 26, Act III of 1925.

20. In sub-section (1) of Section 34 of the said Act, for the words "either of" the word "all" shall be substituted. Amendment of Section 34, Act III of 1925.

21. After section 34 of the said Act, the following section shall be inserted, namely :— Insertion of new Section 34A in Act III of 1925.

"34A. Notwithstanding anything contained in Section 19, if the Court in any action for infringement of a patent finds that any one or more of the claims in the specification in respect of which the infringement is alleged are valid, it may, subject to its discretion as to costs and as to the date from which damages should be reckoned Grant of relief in respect of particular claims.

and to such terms as to amendment as it may deem desirable, grant relief in respect of any of such claims which are infringed without regard to the invalidity of any other claim in the specification. In exercising such discretion the Court may take into consideration the conduct of the parties in inserting such invalid claims in the specification or permitting them to remain there."

Amendment of Section 35, Act III of 1925.

22. In section 35 of the said Act,

(i) for the words "to be the patentee of an invention" the words "to have an interest in a patent" shall be substituted :—

(ii) for the words "any legal rights of the person making such threats" the words "the patent" shall be substituted, and

(iii) in the proviso, for the words beginning with "if the person" and ending with the words "this patent" the words "if an action for infringement of the patent is commenced and prosecuted with due diligence" shall be substituted.

Amendment of Section 41, Act III of 1925.

23. In section 41 of the said Act,

(i) in clause (a) for the word "and" the word "or" shall be substituted,

(ii) after clause (b) the following proviso shall be added, namely,

"Provided that such subsequent registration shall not extend the period of copyright in the design beyond that arising from previous registration."

Insertion of new Sections 48A and 48B. in Act III of 1925.

24. After section 48 of the said Act, the following sections shall be inserted, namely :—

Cancellation of Registration.

"48A. (1) Any person interested may present a petition for the cancellation of the registration of a design—

(*a*) at any time after the registration of the design to the High Court on any of the following grounds, namely :—

(i) that the design has been previously registered in Mysore; or

(ii) that it has been published in Mysore prior to the date of registration; or

(iii) that the design is not a new or original design; or

(*b*) within one year from the date of the registration, to the Controller on either of the grounds specified in sub-clauses (i) and (ii) of clause (*a*).

(2) An appeal shall lie from any order of the Controller under this Section to the High Court, and the Controller may at any time refer any such petition to the High Court, and the High Court shall decide any petition so referred.

Registration of design to bind the Government.

48B. The provisions of section 21 shall apply to registered designs as if those provisions were re-enacted herein and in terms made applicable to registered designs."

Amendment of Section 59, Act III of 1925

25. Clause (*b*) of section 59 of the said Act shall be omitted.

Substitution of new section for Section 60, Act III of 1925.

26. For section 60 of the said Act, the following section shall be substituted namely :—

"60. (1) Where a person becomes entitled by assignment, transmission or other operation of law to a patent or to the copyright in a registered design, he may make application to the Controller to register his title, and the Controller shall, on receipt of such application and on proof of title to his satisfaction, register him as the proprietor of such patent or design, and shall cause an entry to be made in the prescribed manner in the register of the assignment, transmission or other instrument affecting the title.

(2) Where any person becomes entitled as mortgagee, licensee or otherwise to any interest in a patent or registered design he may make application to the Controller to register his title, and the Controller shall, on receipt of such application and on proof of title to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the register of patents or designs, as the case may be, with particulars of the instrument, if any, creating such interest.

(3) The person registered as the proprietor of a patent or design, shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power absolutely to assign, grant licenses as to, or otherwise deal with, the patent or design and to give effectual receipts for any consideration for any such assignment, license or dealing:

Provided that any equities in respect of the patent or design may be enforced in like manner as in respect of any other moveable property.

(4) Except in the case of an application made under section 61, a document or instrument in respect of which no entry has been made in the register in accordance with the provisions of sub-sections (1) and (2) shall not be admitted in evidence in any court in proof of the title to a patent or to copyright in a design or to any interest therein, unless the Court, for reasons to be recorded in writing, otherwise directs."

Amendment of Section 61, Act III of 1925.

27. In section 61 of the said Act

(*a*) in sub-section (1) for the words "The High Court" the words "The Controller" and for the words "as it may think fit" the words "as he thinks fit" shall be substituted;

(*b*) in sub-section (2) for the word "Court" the word "Controller" shall be substituted;

(*c*) for sub-section (3) the following sub-section shall be substituted, namely:—

"(3) An appeal shall lie to the High Court from any order of the Controller under this section; and the Controller may refer any application under this section to the High Court for decision, and the High Court shall dispose of any application so referred"

and (*d*) after sub-section (4) the following sub-section shall be inserted, namely:—

"(5) Nothing in this section shall be deemed to empower the Controller—

(*a*) to rectify the register of patents, or to decide any question relating to a patent, otherwise than for the purpose of correcting a mistake of fact apparent from a reference either to the patent itself or to some order of a competent authority made under any other provision of this Act, or

(*b*) to make any such order cancelling the registration of a design, as is provided for in section 48 A".

Amendment of Section 66, Act III of 1925.

28. Section 66 of the said Act shall be re-numbered as sub-section (1) of that section and to that sub-section as so re-numbered that following sub-section shall be added, namely:—

"(2) An appeal shall lie to the Government from an order of the Controller under this section."

Amendment of Section 67, Act III of 1925.

29. In sub-sections (1) and (2) of section 67 of the said Act, for the word "two" the word "three" shall be substituted.

Insertion of new section 70A in Act III of 1925.

30. After section 70 of the said Act, the following section shall be inserted namely :—

"70-A. *Security for costs.*—Where a person giving notice of any opposition under this Act or giving notice to the Court of Appeal from any decision of the Controller under this Act, neither resides nor carries on business in Mysore, the Controller or the Court, as the case may be, may require such person to give security for the payment of all costs incurred and likely to be incurred in the proceedings or appeal, as the case may be, and, in default of such security being given, may disallow the opposition or dismiss the appeal".

Amendment of Section 75, Act III of 1925.

31. In section 75 of the said Act.—

(*a*) in sub-section (1) after the words "the other State" and before the words "shall be entitled" the words "or his legal representative or assignee" shall be inserted;

(*b*) in proviso (*a*) to sub-section (1) for the word "four" the word "six" shall be substituted.

Substitution of a new schedule for the existing schedule to Act III of 1925.

The following schedule shall be substituted for the schedule to the said Act :—

The Schedule.

(See Section 54)

Fees.	Rs.
On application for a patent ...	10
Before sealing a patent ...	30
Before the expiration of the 4th year from the date of the patent	50
Before the expiration of the 5th year from the date of the patent	50
Before the expiration of the 6th year from the date of the patent	50
Before the expiration of the 7th year from the date of the patent	50
Before the expiration of the 8th year from the date of the patent	100
Before the expiration of the 9th year from the date of the patent	100
Before the expiration of the 10th year from the date of the patent	100

Fees.	Rs.
Before the expiration of the 11th year from the date of the patent	100
Before the expiration of the 12th year from the date of the patent	150
Before the expiration of the 13th year from the date of the patent	150
Before the expiration of the 14th year from the date of the patent	150
Before the expiration of the 15th year from the date of the patent	150
Provided that fees for two or more years may be paid in advance.	
On applicatlon to extend the term of a patent ...	50
Before the expiration of each year of the extended term of a patent or of a new patent granted under section 15	150
On application for registration of a design ...	3

Statement of objects and reasons.

The Mysore Inventions and Designs Act, III of 1925 was based on the Indian Patents and Designs Act, II of 1911. The Indian Patents and Designs Act, II of 1911 has been since amended in 1920, 1923, 1927 and 1930 to suit the changed conditions of the industrial development of the country. It is necessary to bring the Mysore Act into line with the British Indian Act. According to British Indian Act, the term of a Patent which was 14 years prior to 1930 has since been extended to 16 years. As a result, the renewal fees have been enhanced and the schedule of fees has been suitably amended. It is desirable to adopt the same scale of fees in Mysore also. Section 78A of the Indian Patents and Designs Act of 1911, as amended by Act VII of 1930, admits of reciprocal arrangements being made with Indian States and recognises the rights of the legal representatives and assignees of the British Indian applicants to claim priority. Section 75 of the Mysore Act relating to reciprocal arrangements has to be similarly amended.

The amendments proposed are with a view to bring the Mysore Act into conformity with the British Indian Act.

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